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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,410	08/18/2000	Alice Mary O'Donnell-Kiely		7256

Alice O Kiely
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Yorktown Heights, NY 10598-1819

7590

11/16/2010

EXAMINER

CHAWLA, JYOTI

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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11/16/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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Mailed:

NOV 16 2010

In re application of

Kiely

Serial No. 09/641,410

Filed: August 8, 2000

For: COMPOSITE CANDY SUPPORT FOR FROZEN
COMESTIBLES WITH OPTIONAL, EDIBLE MESS
GUARDS AND DRIP GUARDS

:
:
: DECISION ON
: PETITION

This is a decision on the PETITION FILED UNDER 37 CFR 1.181 on September 10, 2010 to Request Reconsideration of the Holding of Abandonment. Applicant originally filed a PETITION FILED UNDER 37 CFR 1.181 on March 29, 2010 to withdraw the Finality of the Office Action dated July 9, 2009 and to have the Notice of Abandonment withdrawn since the Final Office Action was improper. The petition was denied.

The Final Rejection was mailed on July 9, 2009. In no event can the statutory period for reply expire later than 6 months (January 9, 2010) from the mailing date of the final rejection. Applicant's reply is limited either to an appeal or to an amendment complying with the requirements set forth below. A Notice of Appeal must be filed within the period for reply. Applicant submitted an amendment after final on October 9, 2009. An Advisory was mailed out October 26, 2009. Applicant submitted another amendment after final on November 23, 2009. An Advisory action was mailed on January 28, 2010. The statutory period for response by Applicant expired on January 9, 2010. No Notice of Appeal was filed before January 9, 2010. The notice of abandonment was mailed out on February 3, 2010. Applicant filed the initial Petition on March 29, 2010.

The filing of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply, or any extension of this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned.

The Final Office Action addressed Applicant's submission of March 16, 2009. In that submission previously examined claims 1-382 were cancelled and new claims 383-416 were added. Newly submitted claims 403-416 were directed to a method of making a support and since Applicant had elected a product in a response to a previous election requirement, claims 403-416 was not examined. Claims 383-402 was examined.

Applicant disagrees that the amendment necessitated the new grounds of rejection presented in the Final Office Action. Applicant maintains that claims 403-416 are not directed to an invention that is independent or distinct than the species elected, but are directed to the same species. Applicant's original species election (III) on January 23, 2003 was drawn to a composite support. Claims 403-416 are directed to a method of making a support. The Office does not permit the Applicant to shift to claiming another invention after an election is made and an action given on the elected subject matter.

Election becomes fixed when the claims in an application have received an action on their merits by the Office.

Under present practice, second or any subsequent actions on the merits shall be final, except where the Examiner introduces a new ground of rejection that is neither necessitated by Applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

A review of the record indicates that the amendment filed by Applicant necessitated the new ground(s) of rejection presented in this Office Action. The Finality of the Office Action was not premature or improper. The Finality is proper.

Applicants filing of an amendment after final rejection do not stop the period for reply. Applicants failure to file a Notice of Appeal within the period for reply cause the application to become abandoned. The holding of abandonment is maintained and not withdrawn.

DECISION

The petition is **DENIED**.

A review of the application indicates that Applicant has been prosecuting the application without the aid of a Patent Agent or Attorney. The Inventors Assistance Center (IAC) provides patent information and services to the public. IAC can answer general questions regarding patent examining policy; direct your call to appropriate USPTO personnel, as necessary; assist you with filling out forms; provide you with general information concerning rules, procedures, and fees; and send you patenting information via mail or facsimile. IAC cannot answer questions concerning a particular patent application; or give an opinion as to whether an invention is patentable or provide legal advice. You can contact the IAC at **800-PTO-9199** (800-786-9199).

/W. GARY JONES/
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